In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 88

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, ET AL.

No. 111

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SERVETTE, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND THE NINTH CIRCUITS

COMPARISON OF PERTINENT PORTIONS OF SECTION 8 OF THE TAFT-HARTLEY ACT AND THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

For the use of the Court, we set out below a comparison of pertinent provisions of Section 8 of the Taft-Hartley Act of 1947 (61 Stat. 136, 29 U.S.C. 158 (1958 ed.)) and the amendments to those provisions effected by the Labor-Management Reporting

730-946—64

and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 158 (Supp. II 1959-60 ed.)). The text of the Taft-Hartley Act is printed in roman type. Matter added by the Labor-Management Reporting and Disclosure Act of 1959 is in italics. Matter deleted by the 1959 Act is in brackets.

UNFAIR LABOR PRACTICES

SEC. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * *

(4)(*i*) to engage in, or to induce or encourage [the employees of any employer] *any individual employed by any person engaged in commerce or in an industry affecting commerce* to engage in, a strike or a [concerted] refusal in the course of [their] *his* employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services [,]; *or* (*ii*) *to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce,* where *in either case* an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization [or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;] *or to*

enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any [any employer or other] person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 [;]: *Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;*

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order

or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution:* [1]

* * * * *

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is

[1] The text of the Taft-Hartley Act is printed in roman type. Matter added by the Labor-Management Reporting and Disclosure Act of 1959 is in italics. Matter deleted by the 1959 Act is in brackets.

forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act.

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or

other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

FEBRUARY 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964